

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES  
FIRST-CLASS PACKAGE SERVICE  
FIRST-CLASS PACKAGE SERVICE CONTRACT 87

Docket No. MC2018-59

COMPETITIVE PRODUCT PRICES  
FIRST-CLASS PACKAGE SERVICE CONTRACT 87  
(MC2018-59)  
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2018-98

**USPS REQUEST TO ADD FIRST-CLASS PACKAGE SERVICE  
CONTRACT 87 TO COMPETITIVE PRODUCT LIST AND  
NOTICE OF FILING MATERIALS UNDER SEAL**  
(December 15, 2017)

In accordance with 39 U.S.C. § 3642, 39 C.F.R. § 3020.30 et seq., and 39 C.F.R. § 3015.5, the United States Postal Service requests that First-Class Package Service Contract 87 be added to the competitive product list within the Mail Classification Schedule. This is a competitive product not of general applicability within the meaning of 39 U.S.C. § 3632(b)(3).

Attachment A is a redacted version of the Governors' Decision, which includes the explanation and justification required by the Commission's rules. Attachment B is a redacted version of the contract. Attachment C shows the requested changes in the Mail Classification Schedule product list, with the additions underlined. Attachment D provides a statement of supporting justification, as required by 39 C.F.R. § 3020.32. Attachment E is a certification of compliance with 39 U.S.C. § 3633(a)(1) and (3). Unredacted versions of the Governors' Decision, contract, and required cost and

revenue data are being filed under seal. Attachment F provides an Application for Nonpublic Treatment of these materials.

As required by 39 U.S.C. § 3642(d)(1), this Request is being published in the Federal Register.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

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December 15, 2017

**ATTACHMENT A TO REQUEST  
REDACTED GOVERNORS' DECISION**

**DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE  
ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR DOMESTIC COMPETITIVE  
AGREEMENTS, OUTBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, INBOUND  
INTERNATIONAL COMPETITIVE AGREEMENTS, AND OTHER NON-PUBLISHED  
COMPETITIVE RATES (GOVERNORS' DECISION NO. 11-6)**

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March 22, 2011

**STATEMENT OF EXPLANATION AND JUSTIFICATION**

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), we establish new prices not of general applicability for certain of the Postal Service's competitive service offerings, and such changes in classification as are necessary to implement the new prices.

This decision establishes prices for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates. Domestic Competitive Agreements consist of negotiated service agreements with Postal Service customers for domestic services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Outbound International Competitive Agreements consist of negotiated service agreements with Postal Service customers for outbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Inbound International Competitive Agreements consist of negotiated service agreements with foreign postal operators or other entities for inbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Other Non-Published Competitive Rates consist of rates not of general applicability that are not embodied in contractual instruments, but nonetheless arise from other sources, such as the Universal Postal Convention.

With respect to any product within the above categories, management is hereby authorized to prepare any necessary product description, including text for inclusion in the Mail Classification Schedule, and to present such product description to the Postal Regulatory Commission.

The Postal Accountability and Enhancement Act (PAEA) requires that prices for competitive products must cover each product's attributable costs, not result in subsidization by market dominant products, and enable all competitive products to contribute an appropriate share to the Postal Service's institutional costs. For agreements subject to this Decision, there are hereby established all prices that will cover [REDACTED] [REDACTED] costs for the relevant product and that conform in all other respects to 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. As discussed in the accompanying management analysis, the Chief Financial Officer (or his delegee(s)) shall certify that all cost inputs have been correctly identified for prices subject to this Decision and that all prices subject to this Decision conform to this Decision and to the requirements of the PAEA.

No agreement, grouping of functionally equivalent agreements, or other classification authorized pursuant to this Decision may go into effect unless it is submitted to the Postal Regulatory Commission with a notice that complies with 39 U.S.C. § 3632(b)(3). On a quarterly basis, management shall furnish the Governors with a report on all non-published rate and classification initiatives. Not less than once each year, the Governors shall review the basis for this Decision and make such further determination as they may deem necessary. This Decision does not affect postal management's obligation to furnish to the Board of Governors information regarding any significant, new program, policy, major modification, or initiative, or any other matter under 39 C.F.R. § 3.7(d), including where such a matter also falls within the scope of this Decision.

This Decision does not supersede or otherwise modify Governors' Decision Nos. 08-5, 08-6, 08-7, 08-8, 08-10, 08-20, 08-24, 09-5, 09-6, 09-7, 09-14, 09-15, 09-16, 10-1, 10-2, 10-3, 10-6, and 10-7, nor does it affect the validity of prices and classifications established under those Decisions. Management may also continue to present to the Postal Regulatory Commission for its review, as appropriate, rate and classification changes to succeed the minimum and maximum non-published rates in Decision Nos. 10-2 and 10-6.

#### ORDER

In accordance with the foregoing Decision of the Governors, the prices set forth herein for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates and the changes in classification necessary to implement those prices, are hereby approved and ordered into effect. An agreement is authorized under this Decision only if the prices fall within this Decision and the certification process specified herein is followed. Prices and classification changes established pursuant to this Decision will take effect after filing with and completion of review by the Postal Regulatory Commission.

By The Governors:



Louis J. Giuliano  
Chairman

## **Attachment A**

### **Management Analysis of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates**

This analysis concerns the inbound competitive prices and classifications in the Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (collectively, "competitive instruments"). Competitive instruments are often negotiated with customers and foreign postal operators for better cost coverage, higher overall contribution, and improved service with respect to postal services classified as competitive. They may also arise from other sources, such as the Universal Postal Convention.

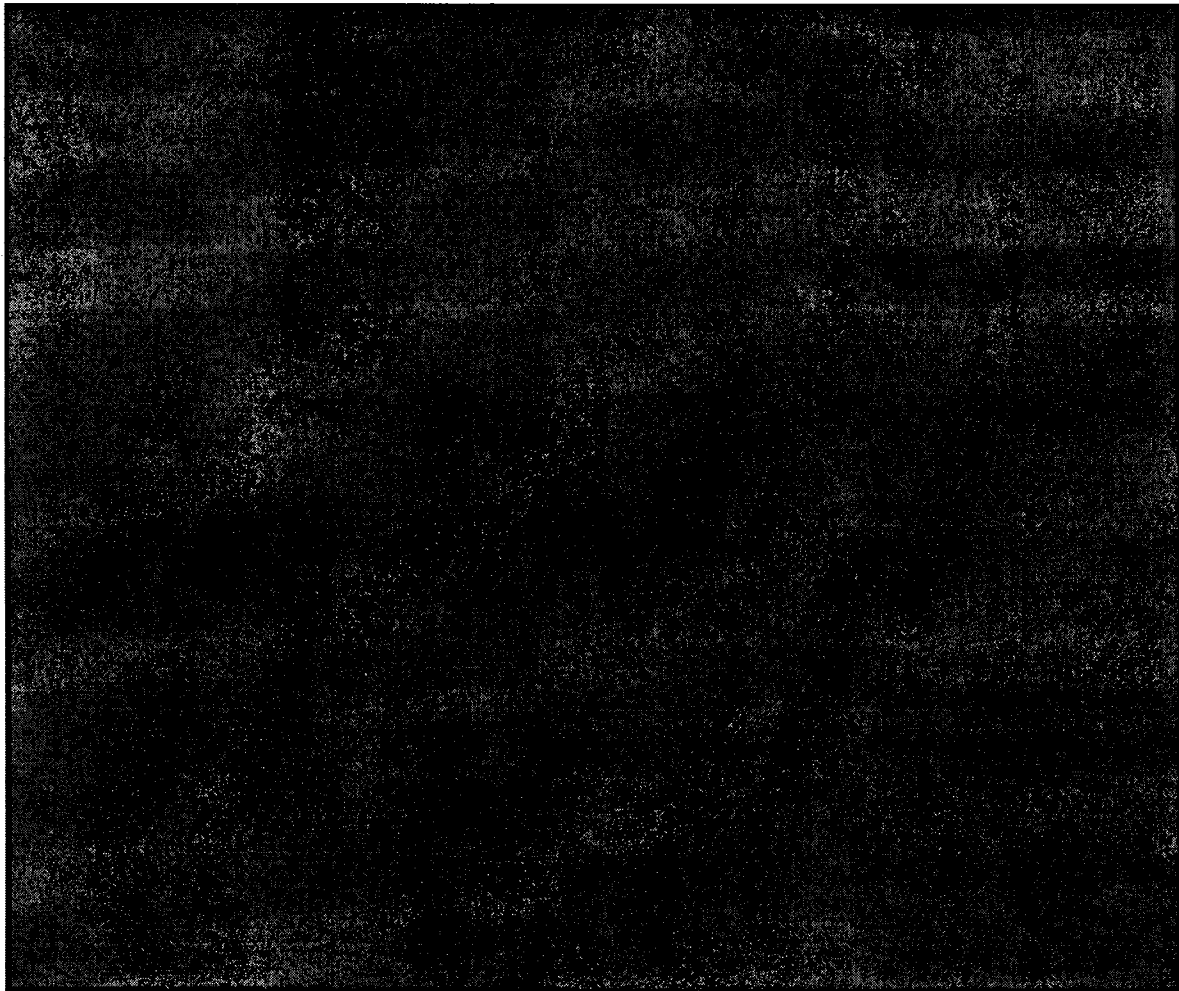
The cost coverage for each competitive agreement or grouping of functionally equivalent instruments (collectively, each "product") will be [REDACTED]

The cost coverage for a product equals [REDACTED]

[REDACTED]

Each competitive instrument may have multiple price categories and negotiated components. Examples of such categories or components would be Priority Mail, Express Mail, Parcel Return Service, Priority Mail International, Express Mail International, International Priority Airmail, International Surface Air Lift, Inbound Air Parcel Post, Inbound Surface Parcel Post, Inbound Direct Entry, and Inbound International Expedited Services. These or other categories may include other services that the relevant customer or foreign postal operator offers to its customers under differing terms, but that nevertheless are processed and delivered in the same manner within the United States Postal Service's network. Such instruments may also establish negotiated rates for services ancillary to such items and for customized competitive services developed for application solely in the context of the agreement.

[REDACTED]

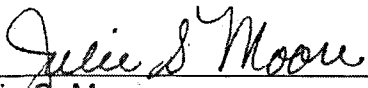


[REDACTED] Prices established by these formulas should not interfere with competitive products' ability as a whole to comply with 39 U.S.C. § 3633(a)(3), which, as implemented by (39 C.F.R. § 3015.7(c)) requires competitive products to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise (39 U.S.C. § 3633(a)(1)).



**CERTIFICATION OF GOVERNORS' VOTE  
IN THE  
GOVERNORS' DECISION NO. 11-6**

I hereby certify that the Governors voted on adopting Governors' Decision No. 11-6, and that, consistent with 39 USC 3632(a), a majority of the Governors then holding office concurred in the Decision.

  
\_\_\_\_\_  
Julie S. Moore  
Secretary of the Board of Governors

Date: 3/22/2011

**ATTACHMENT B TO REQUEST  
REDACTED SHIPPING SERVICES CONTRACT**

**SHIPPING SERVICES CONTRACT**  
**BETWEEN**  
**THE UNITED STATES POSTAL SERVICE**  
**AND**  
**REGARDING**  
**FIRST-CLASS PACKAGE SERVICE**

This contract for shipping services (this "Contract") is made by and between [REDACTED] ("Customer"), a corporation existing under the laws of [REDACTED], with its principal office at [REDACTED], and the United States Postal Service (the "Postal Service" or "USPS"), an independent establishment of the Executive Branch of the United States Government established by the Postal Reorganization Act, Public Law 91-375, with its principal office at 475 L'Enfant Plaza, SW, Washington, DC 20260. The Postal Service and Customer are referred to herein collectively as the "Parties" and each as a "Party."

WHEREAS, it is the intention of the Parties to enter into a shipping services contract that will benefit the Postal Service, the postal system as a whole, and Customer, and its customers, and that will comply with the requirements of Title 39 United States Code, as amended by the Postal Accountability and Enhancement Act of 2006.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**I. Terms**

The following terms apply as of the effective date, as defined below:

- A. Except to the extent different terms or prices are specified in this Contract, applicable provisions of the Domestic Mail Manual (as may be regularly updated by the Postal Service and posted at [http://pe.usps.com/text/dmm300/dmm300\\_landing.htm](http://pe.usps.com/text/dmm300/dmm300_landing.htm)) and of other postal laws and standards apply to mail tendered under this Contract.
- B. This Contract applies to Customer's outbound First-Class Package Service – Commercial ("FCPS") packages [REDACTED] ("Contract Packages").
- C. Customer will utilize an electronic, USPS approved payment method for Contract Packages. Customer shall provide the Postal Service, in writing, a list of new payment accounts for approval. Contract pricing for any newly approved payment accounts will be effective within fifteen (15) business days after the Postal Service received written notification from Customer. Only Contract Packages shipped from

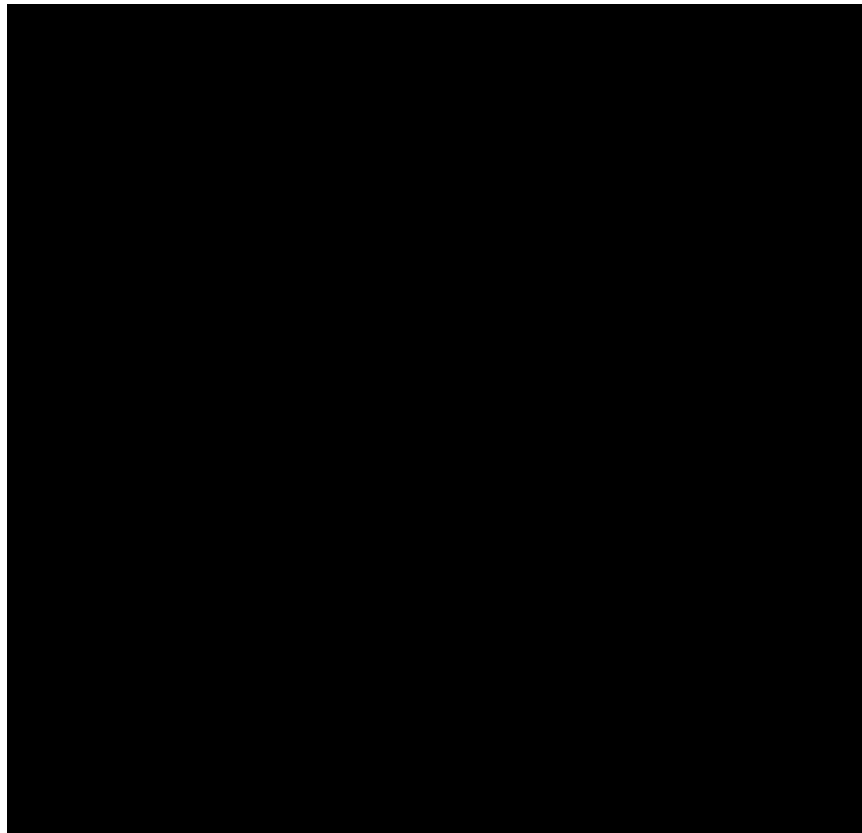
[REDACTED]

[REDACTED]

authorized payment accounts shall count towards the volume estimates in Section I.E below.

- D. **Contract Years.** "Year(s)" or "contract year(s)" refers to the one (1) year period(s) from January 1st through December 31st, unless otherwise specified. Volume Calculation Period ("VCP") refers to the one-year period from November 1st through October 31st.
- E. **Annual Volume Estimates:** Customer has provided the Postal Services with a non-binding estimate of [REDACTED] Contract Packages that Customer expects to ship during the first Contract Year. Customer will provide a written, non-binding Volume Estimation ("Volume Estimate"), which may be sent via email, for Postal Service review and mutual agreement no later than sixty (60) days prior to the start of each subsequent Contract Year.
- F. **Contract Prices.** The following prices apply to Customer's Contract Packages, from this Contract's effective date, as provided in Section II, through December 31, 2018.

**TABLE A: CONTRACT PRICES**



- G. If at any time a price determined by this Contract in a certain cell exceeds the published price for First-Class Package Service - Commercial for that same cell, Customer will pay the published price for First Class Package Service - Commercial.
- [REDACTED]

[REDACTED]

[REDACTED]

If Customer has paid an amount in excess of the published rates for First-Class Package Service - Commercial, the Postal Service will refund the difference between such Contract rates and published rates within forty-five (45) calendar days of one Party notifying the other Party of such payment discrepancy.

#### H. Annual Adjustment

1. Commencing January 1, 2019 and for each subsequent Contract Year, contract prices in Section I.F under this Contract will be the lesser of: the previous Contract Year's prices plus (a) the most recent (as of November 1st immediately prior to each Contract Year) overall average published percentage change in prices of general applicability ("Published Price Increase"), as calculated by the Postal Service, for First-Class Package Service - Commercial, or (b) the Annual Adjustment Cap ("AAC") set forth in Table B below. The AAC will be determined based on Customer's annual volume growth of Contract Packages over the previous VCP. For purposes of calculating the Contract Prices effective January 1, 2019 through December 31, 2019, Contract Package volumes shipped between November 1, 2017 and October 31, 2018 will be compared to Contract Package volumes shipped between November 1, 2016 and October 31, 2017. The Annual Volume Growth ("AVG") pursuant to Table B below will be determined by taking the most recently elapsed VCP's Contract Package volume and subtracting the previous VCP's Contract Package volume. The Annual Growth Percentage ("AGP") pursuant to Table B below will be determined by taking the AVG and dividing by the previous VCP's Contract Package volume. The AAC based on AVG will be compared to the AAC based on the AGP, and the lesser of the two AAC's will be used to compare to the Published Price Increase.

**TABLE B: ANNUAL ADJUSTMENT CAP**

**The following examples are for illustrative purposes only:**

- A. If the Annual Volume for the VCP commencing in 2017 was [REDACTED] Contract Packages and the Annual Volume for the VCP commencing in 2018 was [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Contract Packages, then for the Contract Year commencing in 2020, the AGP would equal:

[REDACTED]

B. If the Annual Volume for the VCP commencing in 2017 was [REDACTED] Contract Packages and the Annual Volume for the VCP commencing in 2018 was [REDACTED] Contract Packages, then, for the Contract Year commencing in 2020, the AVP would equal:

[REDACTED]

2. If the Postal Service maintains or decreases published rates of general applicability for First-Class Package Service - Commercial, there will be no change to contract pricing for that Contract Year; provided, that if published rates in effect at the time of shipping are lower than the rates available under this Contract, the Postal Service agrees that such lower published rates will apply to Customer in lieu of the rates provided under this Contract.
3. The Postal Service will supply Customer the updated price for each cell shown in Table 1 no later than December 1st of each Contract Year.
4. If as of November 1<sup>st</sup> for any Contract Year the most recent, published Consumer Price Index – Urban 12 month rolling average exceeds [REDACTED] as reported by the Postal Regulatory Commission on [www.prc.gov](http://www.prc.gov), the Parties

[REDACTED]

[REDACTED]

[REDACTED]

will use commercially reasonable efforts to make any adjustments to Table B above (regarding the AAC) as mutually agreed to by the Parties.

5. Customized prices for the subsequent years will be calculated by the Postal Service and rounded up to the nearest whole cent.
- I. Quarterly Business Reviews. The Parties will, within thirty (30) calendar days after the conclusion of each full Calendar Quarter in each Contract Year, jointly conduct a business review of Customer's performance expectations under this Contract either in person, by telecom, or by webinar. If either Party is unable to conduct a business review within thirty (30) calendar days after the conclusion of a Calendar Quarter it will notify the other Party in writing (i.e., email or U.S. mail) as provided in Section VII below of that fact and propose a date as soon as practicable thereafter.

## **II. Regulatory Review and Effective Date**

This Contract is subject to approval by the Postal Service senior management and/or the Governors of the Postal Service and the Postal Regulatory Commission (the "Commission"). In accordance with Title 39 and the Commission's Rules of Practice and Procedure, and upon approval of the Postal Service Governors, the Postal Service will make required filings with the Commission. The effective date of this Contract will be two (2) business days following the day on which the Commission issues all necessary regulatory approval. For purposes of this Contract, business days are defined as Monday through Friday, excluding federal holidays and days on which the Postal Service Headquarters is administratively closed.

## **III. Representations, Warranties and Covenants**

Each of the parties represents, warrants and covenants to the other party as follows:

- A. The execution and delivery by such party of the Contract and the performance by such party of its obligations under the Contract (1) are within such party's power and authority; (2) have been duly authorized; and (3) do not and will not contravene (i) any law or regulation binding on or affecting such party, (ii) any contractual restriction binding on such party, (iii) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on such party, or (iv) the organizational documents of such party; and
  - B. The individual signing the Contract on behalf of such party is a duly authorized officer of such party with the power and authority to enter into the Contract on behalf of such party.
  - C. The Customer will comply with all applicable federal, state and local laws, rules and regulations in tendering Contract Packages under this Agreement.
- [REDACTED]

- [REDACTED]
- [REDACTED]
- D. The Postal Service will comply with all applicable laws, regulations, and other requirements (including requirements for licenses, permits, certifications and approvals) of governmental authorities having jurisdiction.

#### **IV. Expiration, Termination, and Extension**

A. Expiration. This Contract will expire on December 31, 2022, unless (1) terminated by either Party with ninety (90) calendar days' notice to the other Party in writing pursuant to Article III.B; (2) renewed by mutual agreement in writing and subsequent approval by the Commission; (3) superseded by a subsequent contract between the Parties; (4) ordered by the Commission or a court; or (5) otherwise required to comply with subsequently enacted legislation.

B. Termination. Each Party reserves the right to terminate this Contract for convenience, without penalty, with ninety (90) calendar days' prior written notice to the other Party. Each Party may terminate this Contract in its entirety upon written notice if the other Party breaches any material term of this Contract and fails to cure such breach within ninety (90) calendar days after receipt by the breaching Party of written notice from the non-breaching Party describing such breach. The right to terminate shall be in addition to and shall not be in lieu of any other remedies available to the parties hereunder or by law. Notwithstanding the foregoing, neither Party may terminate this Contract without cause with an effective date during the period [REDACTED] the terminating Party must exercise its termination right before [REDACTED] of the preceding Contract Year. Notwithstanding the foregoing, in the event of an order or regulation issued by any branch, agency, or regulatory body of the United States Government to terminate, such termination shall be effective immediately or on the effective date of such requirement, whichever is later. Neither party will be subject to any liability solely as a result of such party exercising its termination rights under this Section IV.

C. Extension. If, at the conclusion of this Contract term, both Parties agree that preparation of a successor shipping services contract is active, this Contract will be extended for up to two (2) ninety (90) calendar day periods with official notification to the Commission at least seven (7) calendar days prior to the Contract's expiration date. Upon both Parties agreement of the extension, the escalation clause will be implemented in Section I.H, throughout the extension period.

#### **V. Appeals**

Customer may appeal a Postal Service decision regarding the calculation of prices, the amount of postage paid, or other implementation or operational issues under this Contract by submitting a written appeal within thirty (30) calendar days of receipt of notification of the determination giving rise to the appeal to: Manager, Pricing and Classification Service Center, 90 Church St. Ste. 3100, New York, NY 10007-2951 ((212) 330-5300 / Fax: (212) 330-5320). The decision of the PCSC Manager will be administratively final; provided, that Customer

[REDACTED]



does not waive any appeal rights provided by federal law or Postal Service regulations. Any decision that is not appealed as prescribed becomes the final Postal Service decision. The foregoing appeal process applies only to the issues identified above that arise from implementation of this Contract.

## **VI. Indemnification**

A. The Postal Service hereby releases and will hold harmless, and indemnify Customer, each of its affiliates, and the respective directors, officers, Personnel, successors and assigns of any of the foregoing, from and against any loss, damage, settlement, cost, expense and any other liability (including reasonable attorneys' fees) arising out of or resulting from any third party allegation or claim based on or relating to (A) any personal injury, death, or property damage caused by an act or omission by the Postal Service, any of its affiliates, or any of the respective Personnel of any of the foregoing in connection with the provision of the services under this Contract, (B) any Postal Service breach of this Contract, or (C) gross negligence or willful misconduct of the Postal Service, any of its affiliates, or any of the respective Personnel of any of the foregoing (collectively, "Customer Indemnified Claims"). However, the foregoing does not apply to the extent such Customer Indemnified Claims result from Customer's negligence or willful misconduct. "Personnel" means the employees, contractors, subcontractors, agents and representatives of a person or entity.

B. Customer hereby releases and will hold harmless, and indemnify the Postal Service, each of its affiliates, and the respective directors, officers, Personnel, successors and assigns of any of the foregoing, from and against any loss, damage, settlement, cost, expense and any other liability (including reasonable attorneys' fees) arising out of or resulting from any third party allegation or claim based on or relating to gross negligence or willful misconduct of Customer, any of its affiliates, or any of the respective Personnel of any of the foregoing in connection with the tender of Contract Packages under this Contract (collectively, "Postal Service Indemnified Claims" and, together with Customer Indemnified Claims, "Claims"). However, the foregoing does not apply to the extent such Postal Service Indemnified Claims result from the Postal Service's negligent or willful misconduct.

C. The obligations under this Section VI are independent of all other obligations under this Contract. An indemnifying party will not consent to the entry of any judgment or enter into any settlement without the indemnified party's prior written consent, which may not be unreasonably withheld.

## **VII. Confidentiality**

Neither Party will make public that the Parties have entered into a Contract or will make public the terms of this Contract, except to the extent required by law or as mutually agreed upon in writing by the Parties' duly authorized representatives (which in the case of Customer must be a Vice President). The Postal Service will request that the Commission, in executing its functions under the Act, not disclose: (1) the identity of Customer as a Party to this Contract, (2) the terms of this Contract, or (3) data supporting this Contract filed by the

[REDACTED]

[REDACTED]

Postal Service, in accordance with the Commission's rules and practices, which could identify Customer.

The Parties agree that the terms and conditions of the Mutual Non-Disclosure Agreement between Customer and the Postal Service in effect as of the Effective Date (the "MNDA") are incorporated herein by reference and will apply to all Confidential Information (as defined in the MNDA and including but not limited to the pricing terms of this Contract and Customer's identity as a Party) disclosed by one Party to another.

Customer acknowledges that as part of securing approval of this Contract, the Contract and supporting documentation will be filed with the Postal Regulatory Commission in a docketed proceeding. The Postal Service shall request from the Commission non-public treatment of information that the Postal Service deems to be eligible for protection from public disclosure when it files such material with the Commission, including Customer's identity, the terms of this Contract, and supporting data relating to postal costs, prices, and Customer's shipping profile. The Postal Service will redact such information from its public filing and provide Customer with such redacted document for review and comment prior to its filing. Unless disclosure of a matter relating to this Contract is required by applicable law, the form, substance, and timing of any press release or other public disclosure of such matter must be mutually agreed to by Customer and the Postal Service in writing. Consent to such disclosure shall not be withheld unreasonably. When disclosure of a matter relating to this Contract is required by applicable law, the disclosing Party must notify the non-disclosing Party, and the Parties shall make reasonable efforts to cause a mutually agreeable disclosure to be issued.

Customer authorizes the Postal Service to determine the scope of information that must be made publicly available in the Commission's docketed proceeding. Customer further understands that any unredacted portion of this Contract or supporting information will be available on the Commission's public website, [www.prc.gov](http://www.prc.gov). The Postal Service will notify Customer of the docket number of the Commission proceeding once assigned. Customer has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. Customer agrees to treat as confidential and not disclose to third parties absent express written consent by the Postal Service any information related to this Contract that is determined by the Commission to be non-public.

#### **VIII.           Publicity**

Except for disclosures by Customer to facilitate transactions with individual customers, third party sellers, vendors and other business relations in the ordinary course of business of shipping options or shipment status with respect to shipments to or from such business relations, neither party may use the name, trademarks or logo in any way (including in promotional material) without such party's advance written permission.

#### **IX.            Limitation of Liability**

Neither party is liable for indirect, special, or consequential damages or any loss of revenue, profits arising in connection with this Contract, even if it has been advised of the

[REDACTED]

[REDACTED]

[REDACTED]

possibility of such damages. Further, neither party's aggregate liability arising with respect to this Contract or the services provided hereunder will exceed, at any time, the total amounts paid or payable by Customer to the Postal Service pursuant to Sections I.F of this Contract during the previous twelve (12)-month period.

**X. Taxes**

The Postal Service may charge and Customer will pay applicable national, state or local sales or use taxes or value added taxes that the Postal Service is legally obligated to charge ("Taxes"), provided that such Taxes are stated on the original invoice that the Postal Service provides to Customer and the Postal Service's invoices state such Taxes separately and meet the requirements for a valid tax invoice.

**XI. Notice**

Any notice or other communication to be provided to a Party hereunder shall be in writing and shall be sent via certified mail (with return receipt requested) or by email to the individual and at the address listed below unless otherwise specified by the Party in writing. Notices shall be deemed given when received by the Party.

If to the Postal Service, to:

[REDACTED]

If to the Customer, to:

[REDACTED]

**XII. Governing Law; Consent to Jurisdiction**

THE CONTRACT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH PRINCIPLES OF FEDERAL LAW; PROVIDED, THAT TO THE EXTENT FEDERAL LAW DOES NOT APPLY, THE INTERNAL LAWS OF THE STATE OF [REDACTED], EXCLUDING ITS CONFLICTS OF LAW RULES, WILL APPLY. With respect to any suit, action or other proceedings relating to the Contract, USPS and Customer each irrevocably (a) submit to the exclusive personal jurisdiction and venue in the federal courts in [REDACTED] and (b) waive any objection that it may have at any time to the laying of venue of any proceedings brought in such court, waive any claim that such proceedings have been brought in an inconvenient forum and further waive the right to

[REDACTED]

object, with respect to such proceedings, that such court does not have personal jurisdiction over such Party.

### **XIII. Force Majeure**

Neither Party will be liable for delays or failure to perform under this Contract if due to any cause or conditions beyond its reasonable control, including delays or failures due to acts of God, natural disasters, acts of civil or military authority, fire, flood, earthquake, wars, utility disruptions (shortage of power), judicial or governmental action, that Party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes; provided that the Party whose performance or attempts to cure is delayed or prevented gives the other Party written notice thereof within five (5) business days of any such event or occurrence and exercises its best efforts to resume performance or cure as soon as possible.

### **XIV. Construction**

The headings of the Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Contract. All Section and Exhibit references in this Contract are to Sections and Exhibits, respectively, of or to this Contract unless specified otherwise. Unless expressly stated otherwise, when used in this Contract the word "including" means "including but not limited to". If any provision of this Contract is determined to be unenforceable in any jurisdiction, the parties intend that this Contract be enforced in such jurisdiction as if the unenforceable provisions were not present and that any partially valid and enforceable provisions be enforced in such jurisdiction to the extent that they are enforceable, and further agree to substitute for the invalid provision a valid provision (with respect to such jurisdiction) which most closely approximates the intent and economic effect of the invalid provisions. The Parties have participated jointly in the negotiation and drafting of this Contract. If an ambiguity or question of intent or interpretation arises, this Contract shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise or disfavor any Party by virtue of the authorship of any provisions of this Contract.

### **XV. Third Party Beneficiaries**

This Contract will be binding upon the Parties hereto and their respective permitted assigns and successors in interest and will inure solely to the benefit of such Parties and their respective permitted assigns and successors in interest, and no other Person.

### **XVI. Relationship**

Nothing in this Contract shall be deemed or construed as creating a joint venture or partnership between the Parties. Neither Party is by virtue of this Contract authorized as an agent, employee, or legal representative of the other Party, and the relationship of the Parties is, and at all times will continue to be, that of independent contractors.



## **XVII. Amendments**

This Contract will not be amended except expressly, in writing, by authorized representatives of the Parties.

## **XVIII. Assignment**

Neither Party may assign its rights under this Contract or, delegate its obligations hereunder, without the prior consent of the other, such consent is not to be unreasonably withheld. Notwithstanding the foregoing, Customer may assign this Contract without the Postal Service's consent to any of its affiliates, or any entity in connection with a merger, sale of all or substantially all of the assets, or other similar transaction involving Customer. Customer will provide notice to the Postal Service promptly following any such assignment. If necessary to maintain compliance with Commission approval or requirements following any such assignment, the parties may negotiate in good faith to extend, modify or enter into a new contract applicable to the merged or acquired entity.

## **XIX. Waiver**

Any waiver by a party shall not constitute a waiver for any future occurrence. No waiver shall be valid unless set forth in writing executed by the party waiving such provision.

## **XX. Counterparts**


The Contract may be executed in any number of counterparts, all of which taken together shall constitute one (1) single agreement between the Parties. A facsimile or other electronically or digitally transmitted copy of a signature on any counterpart shall be deemed to be an original signature. The Contract constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties.

*[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]*



IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be duly executed as of the later date below:

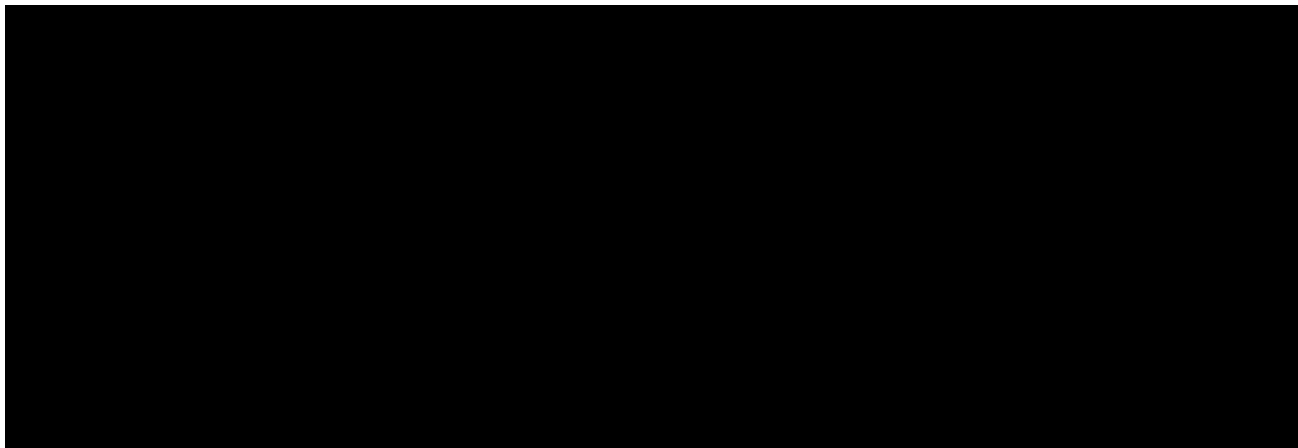
UNITED STATES POSTAL SERVICE

Signed by:   
24459E0DA0B24B6...

Printed Name: Cliff Rucker

Title: Senior Vice President, Sales and Customer Relations

Date: December 11, 2017



**MAIL CLASSIFICATION SCHEDULE**

**PART B—COMPETITIVE PRODUCTS**

**2000 COMPETITIVE PRODUCT LIST**

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**NEGOTIATED SERVICE AGREEMENTS**

Domestic

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First-Class Package Service Contract 87

### Statement of Supporting Justification

I, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, am sponsoring this request that the Commission add First-Class Package Service Contract 87 to the list of competitive products. This statement supports the Postal Service's request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.

- (a) *Demonstrate why the change is in accordance with the policies and applicable criteria of the Act.*

As demonstrated below, the change complies with the applicable statutory provisions.

- (b) *Explain why, as to the market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. § 3622(d), and that it advances the objectives of 39 U.S. C. § 3622(b), taking into account the factors of 39 U.S. C. § 3622(c).*

Not applicable. The Postal Service is proposing that this First-Class Package Service contract be added to the competitive products list.

- (c) *Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633.*

The service to be provided under the contract will cover its attributable costs and make a positive contribution to coverage of institutional costs. The contract will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products arises (39 U.S.C. § 3633(a)(1)).



- (d) *Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.*

The contract sets specific terms and conditions for providing First-Class Package Service to the customer. First-Class Package Service is provided in a highly competitive market. The Postal Service is unable to set prices substantially above costs, raise prices significantly, decrease quality, or decrease output, without losing this business to private competitors in the expedited shipping market.

In negotiating this contract, the Postal Service's bargaining position was constrained by the existence of other providers of services similar to the Postal Service's. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. As with First-Class Package Service in general, the Postal Service may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. The market does not allow the Postal Service to raise prices or offer prices substantially above costs; rather, the contract is premised on prices and terms that provide sufficient incentive for the customer to ship with the Postal Service rather than a competitor.

- (e) *Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 189 U.S.C. 1696, subject to the exceptions set forth in 39 U.S.C. 601.*

I am advised that merchandise sent by First-Class Package Service and this contract are not covered by these provisions. See part (d) above.

- (f) *Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.*

See part (d) above. Expedited shipping, similar to First-Class Package Service, is widely available from well-known and successful private firms at both published and contract prices.

- (g) *Provide any available information of the views of those who use the product on the appropriateness of the proposed modification.*

Having entered into this contract with the Postal Service, the customer supports the addition of the contract to the product list so that the contractual terms can be effectuated.

- (h) *Provide a description of the likely impact of the proposed modification on small business concerns.*

The market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. Large shipping companies serve this market. The Postal Service is unaware of any small business concerns that could offer comparable service for this customer.

- (i) *Include such other information, data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.*

Additional details regarding the terms of the contract have been provided to the Commission under seal due to the sensitivity of the contract to both the customer and the Postal Service.

## **Certification of Prices for First-Class Package Service Contract 87**

I, Steven R. Phelps, Manager, Regulatory Reporting and Cost Analysis, Finance Department, am familiar with the prices and terms for First-Class Package Service Contract 87. The prices and terms contained in this Contract were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (Governors' Decision No. 11-6).

I hereby certify, based on the financial analysis provided herewith, that the prices are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). They are expected to cover attributable costs. There should therefore be no subsidization of competitive products by market dominant products. This contract should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

**Steven R.  
Phelps**

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Steven R. Phelps

Digitally signed by Steven R. Phelps  
DN: cn=Steven R. Phelps, o=United States  
Postal Service, ou=Pricing & Costing,  
email=steven.r.phelps@usps.gov, c=US  
Date: 2017.12.15 13:46:10 -05'00'

## **APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS**

In accordance with 39 C.F.R. § 3007.21, the Postal Service hereby applies for non-public treatment of: the unredacted Governors' Decision; the unredacted shipping services contract; and the supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5. The Postal Service hereby furnishes the justification required for this application by each subsection of 39 C.F.R. § 3007.21(c), as enumerated below.

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials. The Postal Service further requests that the Commission order that the duration of such treatment of customer identifying information be extended indefinitely.

**(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);**

The materials designated as non-public consist of information of a commercial nature, which under good business practice would not be publicly disclosed. In the Postal Service's opinion, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3), (b)(4).<sup>1</sup> Because the portions of the materials which the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

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<sup>1</sup> In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, are not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).<sup>2</sup> Because the portions of materials filed non-publicly in this docket fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

**(2) Identification, including name, phone number, and email address for any third-party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;**

The Postal Service believes that the customer with whom the contract is made has a proprietary interest in the non-public materials and that customer-identifying information should be withheld from public disclosure. Therefore, rather than identifying the customer, the Postal Service gives notice that it has already informed the customer, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service employee responsible for providing notice to the third party with proprietary interest in the materials filed in this docket is Elizabeth Reed, Attorney, 475 L'Enfant Plaza SW, Washington, D.C. 20260-1137, whose email address is [elizabeth.a.reed@usps.gov](mailto:elizabeth.a.reed@usps.gov) and whose telephone number is 202-268-3179.

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<sup>2</sup> The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

**(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;**

The Governors' Decision establishing Domestic Competitive contracts, including those for First-Class Package Service, the contract identifying the customer and containing the prices, terms, and conditions of the contract, and the financial workpapers supporting the contract are being filed under seal in this docket. Redacted copies of the Governors' Decision and the contract are being filed publicly in this docket. The Postal Service maintains that the redacted portions of the Governors' Decision, the contract, name of the customer and related financial information should remain confidential.

With regard to the contract, the redactions are of the name, address, signature block, and other information that could identify the customer; such identifying information of a postal patron may be withheld from mandatory public disclosure by virtue of 39 U.S.C. § 504(g)(1) and 39 U.S.C. § 410(c). Also redacted are the negotiated price structure and the terms directly related to implementation of the price structure.

The redacted portions of the Governors' Decision and attached Analysis protect the costs authorizing Domestic Competitive contracts, and the analysis of those costs.

The redactions applied to the financial work papers protect commercially sensitive information such as underlying costs and assumptions, pricing formulas, information relevant to the mailing profile of the customer, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the workpapers to the actual information it determined to be exempt from disclosure under 5 U.S.C. § 552(b). However, in a limited number of cases, narrative passages or notes were redacted in their entirety due to the practical difficulties of redacting particular words or numbers within the text as presented in a spreadsheet format.

**(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;**

If the redacted information were to be disclosed publicly, the Postal Service considers that it is quite likely that it and the customer would suffer commercial harm.

The information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

Revealing this information would provide a competitive advantage to competitors of the Postal Service and of the customer. The Postal Service considers that it is highly probable that if this information were made public, such entities would take immediate advantage of it and there is a substantial risk that the Postal Service and the customer would lose business as a result. Additionally, other postal customers could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service and other businesses could use the information to their advantage in negotiating with the customer. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

Finally, the financial work papers include specific information such as costs, negotiated prices and pricing structure, assumptions used in developing costs and prices, mailer profile information, and projections of variables. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's and the customer's competitors would likely take great advantage of this information. Unlike its competitors, the Postal Service is required to meet the standards of 39 U.S.C. § 3633 with each negotiated service agreement that it asks to have added to the competitive products list. Competitors are not so constrained and could use the redacted information to their advantage in gaining customers. The formulas shown in the spreadsheets in their native format provide additional sensitive information. Revealing the Postal Service's profit margin information could also be used by the customer to attempt to renegotiate its own prices.

**(5) At least one specific hypothetical, illustrative example of each alleged harm;**

Identified harm: Revealing customer identifying information would enable competitors to target the customers for sales and marketing purposes.

Hypothetical: The identity of the customer in this contract is revealed to the public. A competitor's sales representatives contact the Postal Service's customer and

offer the customer lower prices or other incentives, taking away the business anticipated by the Postal Service.

Identified harm: Public disclosure of negotiated terms of the agreement could be used by competitors and potential customers to the detriment of the Postal Service and its customer.

Hypothetical: A competitor obtains a copy of the unredacted version of Customer A's contract and workpapers to the detriment of the Postal Service's customer. Company B discovers proprietary business strategies and changes its business practices to minimize differentiation, identify their key customer base and cause defection of Customer A's customers. Customer A cancels the contract and withdraws their business from the Postal Service. Other companies would then refuse to share critical details of their business or to participate in negotiated prices with the Postal Service, harming the Postal Service's ability to compete in the marketplace for additional volume and revenue.

Hypothetical: The competitor could leverage multiple services to offer deeper discounts than provided by the Postal Service's contract as a loss leader, using profits on other products profits to make up for the temporary loss.

Identified harm: Public disclosure of the price formula, underlying cost structure, and information in the financial work papers relating to the contract would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing package delivery service or its representative obtains a copy of the unredacted version of the financial work papers. It analyzes the work papers to determine what the Postal Service would have to charge its customers in order to meet its minimum statutory obligations for cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its customers under that threshold and markets its ability to guarantee to beat the Postal Service on price for similar delivery services.

Hypothetical: Competitors constantly monitor "cost to serve" scenarios to combine and alter facilities to lower costs. A competitor could add satellite pickup stations closer to the Postal Service's customer in order to underbid the Postal Service's prices.



Identified harm: Public disclosure of the prices and related terms would provide potential customers extraordinary negotiating power.

Hypothetical: Customer B obtains the contract showing Customer A's negotiated prices and the underlying workpapers. Customer B can determine that there is additional profit margin between the prices provided to Customer A and the statutory cost coverage that the Postal Service must produce in order for the agreement to be added to the competitive products list. Although Customer B was offered prices identical to Customer A's, Customer B uses the publicly available information to insist that it unless the Postal Service offers it even lower prices than Customer A's, it will not use the Postal Service but will give its business to a competitor of the Postal Service.

Alternatively, Customer B attempts to negotiate lower rates only for those destinations for which it believes the Postal Service is the low-cost provider among all service providers. The Postal Service may agree to this demand in order to keep the customer's business overall, which it believes will still satisfy total cost coverage for the agreement. Then, Customer B uses other providers for destinations other than those for which it negotiated lower rates. This impacts the Postal Service's overall projected cost coverage for the agreement. Although the Postal Service can terminate the contract when it sees that the mailer's practice and projected profile are at variance, the costs associated with establishing the contract, including filing it with the Postal Regulatory Commission, would be sunk costs that would have a negative impact on postal finances.

Harm: Public disclosure of information in the financial work papers would be used by the customer's competitors to its detriment.

Hypothetical: A business in competition with the customer obtains a copy of the unredacted version of the financial work papers. The customer's competitor analyzes the work papers to assess the customer's underlying shipping costs. The customer's competitor uses that information as a baseline to negotiate with shipping companies and other suppliers to develop lower-cost alternatives and thereby to undercut the customer.

**(6) The extent of protection from public disclosure deemed to be necessary;**

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the market for domestic parcel shipping products, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for such products should not be provided access to the non-public materials.

**(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and**

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30. The Postal Service believes that the ten-year period of non-public treatment is sufficient to protect its interests with regard to the information it determined should be withheld due to commercial sensitivity, other than customer identifying information. The Postal Service believes that customer-identifying information should be protected permanently and asks the Commission to extend the duration of non-public status of that information indefinitely. Disclosure of customer identifying information leaves the Postal Service vulnerable to competitive "cherry-picking." Customers may seek to extend or renew their contracts, but the implementation of a new 10-year period of non-public treatment with each renewed contract does not affect the expiration of non-public treatment of the same information under the original contract. Therefore, the Postal Service seeks indefinite non-public treatment of the customer's name, address and other identifying information in the non-public materials.

**(8) Any other factors or reasons relevant to support the application.**

None.